

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

KOLBY DUCKETT,	*
DAVID SCHILLING, and	*
DAVID HOLLOWAY,	*
Plaintiffs,	*
v.	*
CHIEF BRIAN HICKMAN, individually, and in his official capacity as the Police Chief of the City of Collegedale,	Docket No. 1:19-cv-00295
TED ROGERS, individually, and in his official capacity as the City Manager of the City of Collegedale, and	*
THE CITY OF COLLEGEDALE, TENNESSEE, a municipality.	JURY DEMAND
Defendants.	*

PLAINTIFFS' MOTION TO COMPEL TO CURTIS BOWE

COME NOW, the Plaintiffs, Kolby Duckett (Officer Duckett), David Schilling (Officer Schilling), and David Holloway (Corporal Holloway) by and through their counsel, Davis & Hoss, P.C., pursuant to Rules 26 and 37 of the *Federal Rules of Civil Procedure* and moves the court for an order requiring the Curtis Bowe, a material witness in the above captioned case, to respond to the subpoenas which have been executed upon him. The Plaintiffs would respectfully show as follows:

1. Curtis Bowe is a local attorney practicing in Hamilton County. He is also a reserve police officer for the City of Collegedale and has been throughout all relevant time periods of the instant case.

2. Upon information and belief, Mr. Bowe was in almost daily contact with the Plaintiffs and police administration to include Chief Hickman, Lt. Jack Sapp, Sgt. Jamie Heath, Sgt. Westfield and others about the specific issues that have been raised in the present lawsuit.

3. Upon information and belief, the Plaintiffs routinely discussed matters concerning the Collegedale Police Department with Mr. Bowe, up to and including the date of their termination. Upon information and belief, Chief Hickman, Lt. Sapp, and Sgt. Heath routinely discussed and continue to discuss matters which are relevant to this lawsuit with Mr. Bowe.

4. In anticipation of the disclosure of relevant communications, counsel for the Plaintiffs executed and served a subpoena to produce documents on Mr. Curtis Bowe on May 1, 2020, requesting “any and all communications (emails and other written forms of communications) with members of the City of Collegedale Administration (i.e. Chief Brian Hickman, Ted Rogers, City Commissioner, Mayor, Vice Mayor, Chief James Hardeman, Lt. Jack Sapp, Sgt. Jamie Heath, and Sgt. Mike Westfield) regarding ‘performance standards,’ ‘pending litigation against the City of Collegedale,’ ‘monthly statistics,’ ‘enforcement activities,’ ‘patrol activities,’ ‘officer productivity,’ and ‘quota.’” (See Doc. 29).

5. Counsel for the Plaintiffs spoke with Mr. Bowe prior to serving this subpoena, as a courtesy, to give him as much notice as possible.

6. At one point, Mr. Bowe asked for an extension to the end of June 2020. Counsel for the Plaintiffs granted that extension.

7. On Monday, August 3rd, 2020, having not received a response from Mr. Bowe, counsel sent Mr. Bowe a text message inquiring about the status. Mr. Bowe stated that he was “pulling everything together Wednesday and getting it prepared for you for Friday.”

8. On August 12th, 2020, a subpoena to testify at a Deposition was issued and served via hand delivery on Mr. Bowe for a Deposition on September 10, 2020. *See Doc. 54.*

9. On Tuesday, August 25th, 2020, counsel texted Mr. Bowe again inquiring as to the status of the subpoena and heard no response.

10. On September 2, 2020, Mr. Bowe sent an email to counsel for the Plaintiffs and Brian Bibb, counsel for Chief Hickman. Attached to the email were six (6) emails that were responsive to Mr. Bibb’s subpoena. Mr. Bowe stated that this was the first set of emails and that he was compiling text messages. He further said that he would continue to provide others as his client schedule allowed. *See Exhibit A, 9.2.20 Email from Curtis Bowe.*

11. To date, counsel for the Plaintiffs has not received any documents that are responsive to the subpoena that was executed on May 1, 2020.

12. On September 9, 2020, counsel for the Plaintiffs called Mr. Bowe to postpone his deposition scheduled for September 10 until the next day on September 11. Mr. Bowe indicated needing to speak to all counsel together.

13. On September 10, 2020, during Sergeant Jamie Heath’s deposition, Sergeant Heath indicated a reluctance to answer questions about a conversation with Mr. Bowe and cited attorney-client privilege.

14. All counsel immediately called Mr. Bowe at which time Mr. Bowe, for the first time during the course of this lawsuit, indicated that he is in possession of potentially privileged communication. This privilege, according to Mr. Bowe extends to all three Plaintiffs, Chief

Hickman, Lt. Jack Sapp, Sgt. Westfield, Sgt. Jamie Heath, and potentially Ted Rogers and City Commissioners. Further, according to Mr. Bowe, this privilege extends to all communications that are responsive to the subpoena.

15. Mr. Bowe indicated at that time that he could not participate in a deposition where he would be asked about specific conversations with the above-mentioned individuals.

16. Mr. Bowe further indicated that he would promptly file a Motion to Quash the subpoenas with this Court.

17. On September 18th, 2020, Mr. Bowe notified all attorneys that he had retained Mr. John Cavett to represent him on this matter. *See Exhibit B, 9.18.20 Email from Curtis Bowe.*

18. After several days without a Motion to Quash, counsel for the Plaintiffs reached out to Mr. Cavett on October 5, 2020. Mr. Cavett responded that he would be filing the Motion to Quash “within the next few days.”

19. As of November 3, 2020, no Motion to Quash the three subpoenas has been filed.

20. Counsel has tried to be accommodating with Mr. Bowe due to his solo practice, the COVID-19 Pandemic, and his job with the City of Collegedale. However, it has been almost six months since the Plaintiffs served their subpoena and they have not received a single responsive document. Despite repeated assertions that documents would be produced, counsel for the Plaintiffs did not learn of this potential privilege issue until the day Mr. Bowe was scheduled for his deposition. Further, the parties have participated in twelve (12) depositions to date, spanning over the course of three (3) months. Other than the Defendants and two other fact witnesses, fact and party depositions will be complete, except for Mr. Bowe. The Plaintiffs file this motion now in order to prevent continued delay of this issue.

WHEREFORE, the Plaintiffs are requesting a hearing on this matter, an Order compelling Mr. Bowe to comply with both the Subpoena to Produce Documents and the Subpoena to a Deposition, and for any further relief to which the Plaintiffs may be entitled.

Respectfully submitted,

DAVIS & HOSS, P.C.

\s\ Janie Parks Varnell

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U. S. mail. Parties may access this filing through the Court's electronic filing system.

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This the 3rd day of November, 2020.

s/Janie Parks Varnell